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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELVA LOPEZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY and SIMPLILEARN AMERICAS, INC.,

Defendants.

Case No. CGC-23-607810

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Date: August 14, 2025
Time: 10:00 a.m.
Judge: Hon. Ethan P. Schulman
Department: 304
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TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

I. INTRODUCTION 8

II. NATURE OF THE CLAIMS 8

III. PROCEDURAL BACKGROUND 9

IV. OVERVIEW OF THE SETTLEMENT 10

A. Class Definition 10

B. Monetary Relief 10

C. Programmatic Relief 12

D. FERPA 12

E. The Notice Process 13

F. Release of Claims 14

V. LEGAL STANDARD 14

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE 15

A. The Settlement Is a Product of Arm's-Length Negotiations 16

B. Sufficient Discovery Occurred to Enable Counsel and the Court to Intelligently Determine the Settlement Is Fair 16

C. Settlement Is Appropriate in Light of the Strength of Plaintiffs' Case and the Risk of Further Litigation 17

D. The Settlement Provides Substantial Monetary Relief to Class Members 18

E. The Settlement Includes Important Programmatic Non-Monetary Terms 19

F. The Experience and Views of Counsel Support Settlement 20

G. The Proposed Amount for Attorneys' Fees and Costs is Fair and Reasonable 20

H. The Proposed Service Fee Award is Fair and Reasonable 21

I. The Settlement Administrator is Qualified and Its Fee is Fair and Reasonable 21

J. The Notice Process Apprises Class Members of Their Rights and Satisfies Due Process 22

VII. SETTLEMENT CLASS CERTIFICATION IS APPROPRIATE 22
A. The Settlement Class is Ascertainable 22
B. The Settlement Class is Sufficiently Numerous 23
C. There is Significant Community of Interest Among the Settlement Class 23
1. Common questions of law and fact predominate 23
2. Plaintiff's claims are typical of the class 24
3. Plaintiff will adequately represent the class 24
VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING 24

TABLE OF AUTHORITIES

Page(s)

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.,
85 Cal.App.4th 1135 (2000) 17, 20

Acosta v. Trans Union, LLC,
243 F.R.D. 377 (C.D. Cal. 2007) 15

Air Line Stewards, etc., Loc. 550 v. Am. Airlines, Inc.,
455 F.2d 101 (7th Cir. 1972) 18

Amaro v. Anaheim Arena Mgmt., LLC,
69 Cal.App.5th 521 (2021) 14

Bell v. Farmers Ins. Exch.,
115 Cal.App.4th 715, (2004) 21

In re Bluetooth Headset Prods. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011) 16

Bradach v. Pharmavite, LLC,
735 F. App'x 251 (9th Cir. 2018) 23

Brinker Rest. Corp. v. Superior Ct.,
53 Cal.4th 1004 (2012) 22, 24

Cabrera v. Google LLC,
2023 WL 5279463 (N.D. Cal. Aug. 15, 2023) 23

California v. Levi Strauss & Co.,
41 Cal.3d 460 (1986) 15, 22

Cellphone Termination Fee Cases,
180 Cal.App.4th 1110 (2009) 14, 15

Cellphone Termination Fee Cases,
186 Cal.App.4th 1380 (2010) 22

Clark v. Am. Residential Servs. LLC,
175 Cal.App.4th 785 (2009) 17

Dunk v. Ford Motor Co.,
48 Cal.App.4th 1794 (1996) 15

Ebarle v. Lifelock, Inc.,
2016 WL 234364 (N.D. Cal. Jan. 20, 2016) 18

Gonzales v. San Gabriel Transit, Inc.,
40 Cal.App.5th 1131, (2019) 24

Graciano v. Robinson Ford Sales, Inc.,
144 Cal.App.4th 140 (2006) 20

Hayward v. Ventura Volvo,
108 Cal.App.4th 509 (2003) 20

Hendershot v. Ready to Roll Transp., Inc.,
228 Cal.App.4th 1213 (2014) 23

Hernandez v. Restoration Hardware, Inc.,
4 Cal.5th 260 (2018) 15

In re High-Tech Emp. Antitrust Litig.,
2015 WL 5159441 (N.D. Cal. Sept. 2,2015) 19

In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig.,
609 F. Supp. 3d 942 (N.D. Cal. 2022) 24

Kasky v. Nike, Inc.,
27 Cal.4th 939 (2002) 23

Kullar v. Foot Locker Retail, Inc.,
168 Cal.App.4th 116 (2008) 16

In re LinkedIn User Priv. Litig.,
309 F.R.D. 573 (N.D. Cal. 2015) 18

Lytle v. Nutramax Lab'ys, Inc.,
114 F.4th 1011 (9th Cir. 2024) 23

Mallick v. Superior Ct.,
89 Cal.App.3d 434 (1979) 15

McGhee v. Bank of Am.,
60 Cal.App.3d 442 (1976) 24

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 19

Miller v. Fuhu Inc.,
2015 WL 7776794 24

Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 18

In re Nicole S.,
39 Cal.App.5th 91 (2019) 20

Noel v. Thrifty Payless, Inc.,
7 Cal.5th 955 (2019) 22, 23

Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco,
688 F.2d 615 (9th Cir. 1982) 18, 19

In re Omnivision Techs., Inc.,
559 F. Supp. 2d 1036 (N.D. Cal. 2008) 19

Pulaski & Middleman, LLC v. Google, Inc.,
802 F.3d 979 (9th Cir. 2015) 19

Reed v. 1-800 Contacts, Inc.,
2014 WL 29011 (S.D. Cal. Jan. 2, 2014) 19

Reitman v. Champion Petfoods USA, Inc,
2019 WL 7169792, (C.D. Cal. Oct. 30, 2019),
aff'd, 830 F.App'x 880 (9th Cir. 2020) 23

Shaeffer v. Califia Farms, LLC,
44 Cal.App.5th 1125 (2020) 23, 24

Skinner v. Ken's Foods, Inc.,
53 Cal.App.5th 938 (2020) 24

In re Tobacco Cases II
240 Cal.App.4th 779 (2015) 19

In re Tobacco II Cases,
46 Cal.4th 298 (2009) 23, 24

In re Toys R Us-Delaware, Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig.,
295 F.R.D. 438 (C.D. Cal. 2014) 19

Villacres v. ABM Industries Inc.,
189 Cal.App.4th 562 (2010) 14

In re Vioxx Class Cases,
180 Cal.App.4th 116 (2009) 23

Warren v. Kia Motors Am., Inc.,
30 Cal.App.5th 24 (2018) 20

Wershba v. Apple Comput., Inc.,
91 Cal.App.4th 224 (2001) 15, 16, 18

Statutes

20 U.S.C. §1232g 12

Bus. & Prof. Code
§17200 9
§17500 9

Civil Code
§1770 9
§1780 11
§1780(e) 20
§1781 23
§1782 9

Code of Civil Procedure §1021.5 ..... 11, 20

Other Authorities

34 C.F.R.
§99.3 ..... 12, 13
§99.31(a)(9)(i)-(ii) 13

California Rules of Court 3.769 ..... 15, 22

Newberg & Conte, Newberg on Class Actions, § 11.41 ..... 15, 16

I. INTRODUCTION

Plaintiff Elva Lopez respectfully submits this motion for preliminary approval of a non-reversionary class settlement and for certification of the proposed class for purposes of settlement. This settlement will resolve 263 students' and former students' claims that Defendants California Institute of Technology ("Caltech") and Simplilearn Americas, Inc. ("Simplilearn") deceptively advertised their Caltech Cybersecurity Bootcamp to prospective students. The settlement provides for a Class Settlement Amount of $400,000 to be distributed to participating class members. After accounting for modest settlement administration fees and a plaintiff service award, distribution of the Class Settlement Amount will provide an approximately 16% refund of the tuition paid to each class member, for an average of about $1465 per class member. This is close to what class members could expect should they prevail at trial. There is no claims process. Following final approval, checks will be mailed to class members. In exchange, class members will release claims that were or could have been asserted based on the facts alleged in the action. The settlement also provides for substantial injunctive relief to address the false advertising allegations underlying Plaintiff's claims, as well as for a separate and independent Attorneys' Fees Amount of $325,000 to be awarded to Plaintiff's counsel if the Court approves. This is a fair, meaningful, and reasonable settlement result for the class, and Plaintiff accordingly requests that the Court preliminarily approve the settlement, certify a settlement class, order that class notice be sent, and set a hearing date for a final approval hearing.

II. NATURE OF THE CLAIMS

Plaintiff Elva Lopez is a California resident who enrolled in a six-month online education program called the "Caltech Cybersecurity Bootcamp" ("Bootcamp") that provides training in the field of cybersecurity. Lopez Decl. ¶2. Plaintiff Lopez's complaint alleges that Defendants Caltech and its partner Simplilearn (formerly, Fullstack Academy) deceptively market the Bootcamp on their websites and other advertisements. *See* Second Amended Complaint ("2AC") ¶¶1-17. The complaint alleges that Defendants publicize the Bootcamp as being provided by Caltech's Center for Technology and Management Education ("CTME"), but fail to disclose that Simplilearn/Fullstack provides the curriculum and instruction for the Bootcamp. *See id.*

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III. PROCEDURAL BACKGROUND

On July 20, 2023, Plaintiff Lopez filed her initial complaint in San Francisco Superior Court. The complaint alleged that Defendants' Bootcamp marketing violates the False Advertising Law ("FAL"), Bus. & Prof. Code §17500 *et seq*., Unfair Competition Law ("UCL"), Bus. & Prof. Code §17200 *et seq*., Consumer Legal Remedies Act ("CLRA"), Civil Code §1770, and unjust enrichment. *See* Complaint ¶¶84-111. Plaintiff proposed a class definition of:

> All California citizens who enrolled in the Caltech Cybersecurity Bootcamp during the period beginning four years before the filing of this Complaint through the date of final judgment.

Id. ¶76. Plaintiff initially sought remedies of restitution and injunctive relief. *Id.* (Prayer for Relief).

After providing Defendants the required 30-days' notice for a CLRA damages claim, Plaintiff agreed to amend her complaint to add that the damages claim before Defendants filed their demurrer. *See* Joint Initial CMC Statement (Oct. 16, 2023) at 3-4; Civil Code §1782. After Defendants demurred and moved to strike, Plaintiff filed her second amended complaint as a matter of right on December 21, 2023. *See* 2AC. On January 31, 2024, Defendants demurred and moved to strike again. After extensive briefing and argument, on April 11, 2024, the Court overruled Defendants' demurrer to the second amended complaint and denied Defendants' motion to strike, holding that Plaintiff's allegations stated a claim for deceptive advertising under the UCL, FAL, and CLRA. *See* Order on Demurrer (Apr. 11, 2024) at 7-14. The Court dismissed Plaintiff's unjust enrichment claim as duplicative of her other claims. *Id.* at 14.

From November 2023 through September 2024, the parties conducted substantial discovery. Rothschild Decl. ¶12. Defendants produced almost 25,000 pages of documents, which Plaintiff's counsel reviewed. *Id*. Plaintiff Lopez produced approximately 65,000 pages of documents. *Id*. The parties also served and responded to interrogatories. *Id*. The parties negotiated a *Belaire* notice, which was sent to potential class members on August 2, 2024. *Id*. Plaintiff's counsel spoke with many Bootcamp students. *Id*.

On October 9, 2024, the parties engaged in a full-day videoconference mediation with Hon. Halim Dhanidina (Ret.). *Id*. ¶13. Although that mediation did not produce a complete settlement, the

parties continued negotiations through counsel. *Id.* ¶¶13-14. After several months of further arms-length negotiations, the parties reached agreement on settlement terms. *Id.* ¶14. The parties executed a final longform settlement agreement on July 1, 2025. *Id.*

IV. OVERVIEW OF THE SETTLEMENT

A. Class Definition

The class definition in the Settlement Agreement is:

> All California citizens who enrolled in the Caltech Cybersecurity Bootcamp (also known as "CTME Cybersecurity Bootcamp" or "Caltech CTME Cybersecurity Bootcamp") during the period from July 20, 2019 through the date this Settlement Agreement is executed, but excluding enrollees who received a full refund of Bootcamp tuition and fees.

Rothschild Decl. Ex. 1 ("Settlement") §III, ¶5.

This definition slightly modifies the definition pleaded in the complaint by adding the phrase "excluding enrollees who received a full refund of Bootcamp tuition and fees." This phrase was added because, during discovery and settlement negotiations, it came to light that some Bootcamp students had already received full refunds. Rothschild Decl. ¶17.

B. Monetary Relief

The Settlement establishes a Class Settlement Amount of $400,000. Settlement §III, ¶10. After deducting funds for settlement administration and a proposed Class Representative Service Payment, the remainder of the Class Settlement Amount ("Net Class Settlement Amount") will be distributed to the class members who do not opt out *pro rata* based on the amount of each class member's tuition paid ("Individual Settlement Payments"). *Id.* §III, ¶20, §XI. Subject to the Court's approval, the amounts anticipated to be deducted from the Class Settlement Amount prior to allocation will be: costs of settlement administration not to exceed $10,500, and a Class Representative Service Payment of $4,500. *Id.* §§X, ¶4, XI.B. This amounts to an average of approximately $1465 to each of the 263 class members.

The Class Settlement Amount will be distributed according to the following schedule: within 30 days of the Settlement becoming effective, Defendants will transfer the Gross Settlement Amount to the Settlement Administrator via wire transfer. *Id.* §XI.A, ¶1. The Settlement

Administrator will issue payments of Individual Settlement Payments and the Class Representative Service Payment within 45 days after the effective date.[1] *Id.* §XI.A, ¶2.

The Settlement Administrator will make reasonable efforts (i.e., mail postcards) to remind participating class members who have not cashed their check after forty-five (45) days that the check remains outstanding. *Id.* §XI.E, ¶1. Checks will become void after 180 days. *Id.* §XI.E, ¶2. If after 180 days from the mailing date the amount of uncashed checks is equal to or greater than $50,000, the Settlement Administrator will send out a second round of distributions in proportion to the first round. *Id.* If the amount of uncashed checks is less than $50,000, and/or there are uncashed checks after a second distribution, the amount will be sent to *cy pres* recipient Legal Aid Foundation of Los Angeles, which "assist[s] clients who cannot afford to repay their student loans and/or have attended for-profit colleges that engaged in predatory, deceptive, or illegal practices." *Id.*; *see also* https://lafla.org/get-help/student-loan-issues/. Proposed class counsel have no interest or involvement in the *cy pres*. Cervantez Decl. ¶13; Rothschild Decl. ¶23.

The Settlement also establishes an Attorneys' Fees Amount of $325,000 that is separate and apart from the Class Settlement Amount. Settlement §III, ¶2, §XII. The Attorneys' Fees Amount is allocated to be paid to Plaintiff's counsel, subject to approval by the Court and pursuant to Civil Code §1780 and/or C.C.P §1021.5, for work reasonably performed and expenses reasonably incurred by Plaintiff's counsel in prosecuting the Action. *Id.* §XII.

The Settlement is non-reversionary. No amount of the Class Settlement Amount or Attorneys' Fees Amount will revert to Defendants, but instead will be distributed to the class or *cy pres* as set forth in the Settlement Agreement. *Id.* §XI.A, ¶1.

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[1] The Settlement is effective once the Court grants final approval and (1) the California Court of Appeal has rendered a final judgment affirming the Court's approval and the date for further appeal or review has passed without further appeal or review; (2) the Court of Appeal has rendered a final judgment affirming the Court's final approval and the further appeals have been resolved without material modification of the final approval order; (3) the applicable date for seeking appellate review of the Court's final approval has passed without a timely appeal or request for review having been made; or (4) upon the date the Court grants final approval if no timely and valid objections to the Settlement have been filed, or were subsequently withdrawn. Settlement, §III, ¶13.

C. Programmatic Relief

The Settlement includes significant programmatic relief addressing the deceptive advertising allegations underlying Plaintiff's claims. To the extent Defendants continue to collaborate to present the Caltech Cybersecurity Bootcamp, Caltech CTME will "review and approve in advance the curriculum for the Bootcamp; review and approve in advance instructors for the Bootcamp; conduct Master Classes; monitor class performance via learner feedback; and review and approve marketing content." Settlement §IX.

Defendants' websites concerning the Bootcamp "will include an accurate and prominent description of Caltech CTME's and Simplilearn's respective roles" in the program; "will include a directory page listing all current Bootcamp instructors and their affiliation"; will disclose if a Caltech webpage directs users to a Simplilearn webpage; will describe or provide a link to the expertise and experience of instructors listed as "industry experts" by Defendants; "will not represent that Bootcamp students have access to Caltech services that they do not have access to"; and will identify if other Bootcamp-related functions (e.g. recruiting and career counseling) are performed by Simplilearn." *Id.* §IX, ¶2.

Defendants' advertisements concerning the Bootcamp will, to the extent space permits, disclose that the Bootcamp is delivered "in collaboration with Simplilearn" and link to a website with the information as described above. *Id.* §IX, ¶3. Simplilearn employees will disclose their affiliation when communicating with potential Bootcamp students and use Simplilearn email addresses. *Id.* §IX, ¶4. Defendants will also take reasonable measures to ensure that any representations on their websites regarding Bootcamp students' success rates on cybersecurity certification exams or hiring results are accurate. *Id.* §IX, ¶2(f). And Defendants will not hire or use Bootcamp instructors whose only credentials for teaching cybersecurity are that they have graduated from a cybersecurity bootcamp. The programmatic relief continues for five years. *Id.* §IX.

D. FERPA

Distribution of Class Notice and checks implicates the Family Educational Rights and Privacy Act ("FERPA"), which prevents schools from disclosing students' personally identifiable information except in specified circumstances. *See* 20 U.S.C. §1232g; 34 C.F.R. §99.3. Schools may disclose

information "to comply with a judicial order" if the school "makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action." 34 C.F.R. §99.31(a)(9)(i)-(ii). Therefore, Plaintiff requests that the Court's preliminary approval order specifically order Defendants to disclose class members' names, contact information, and tuition amounts to the Settlement Administrator for purposes of providing class notice and administering the settlement, subject to Defendants making a reasonable effort to notify the students of the order in advance of compliance as required by 34 C.F.R. §99.3.

The Settlement Agreement provides that Defendants will make a reasonable effort to notify Class Members of the Court's order before compliance by providing notice to each Class Member's last known email address within five (5) days of the order. Settlement §VI. The notice will include notice of the order, of Defendants' intent to comply, and that the class member has seven days to seek a protective order from the Court if they do not want their information disclosed.[2] *Id.* The notice will also explain that the reason the Court ordered the disclosure is to enable payment of a class action settlement to the student, and that a class member who opposes disclosure of their FERPA information will be deemed to have opted out of the settlement. *Id.*

E. The Notice Process

A proposed class notice of the Settlement (the "Notice") is attached as Exhibit A to the Settlement Agreement. If the Court approves that Notice, the Settlement Administrator will send the Notice to each class member via U.S. mail and email within 21 days of receiving class member information from Defendants. Settlement §VII.C. The Notice to each class member will include an estimate of the Individual Settlement Payment that the class member is eligible to receive. *Id.* ¶2. In the event of returned or non-deliverable notices, the Settlement Administrator will attempt to locate class members and re-send the notice. *Id.* ¶3.

The Notice will include the URL to an interactive settlement website set up by the Settlement Administrator. *See* Settlement Ex. A; *see also* Settlement §I, ¶35, §VII.D, ¶3. The website will

[2] Defendants will provide the class list to the Settlement Administrator 28 days after the preliminary approval date. Settlement §VII.C, ¶1.

include key case documents (Second Amended Complaint, Settlement Agreement, and the Notice of Settlement). *Id.* §VII.D, ¶3. The Website will also provide an electronic means by which the Class Members can submit opt-out requests and notices of objection. *Id.* The Website will also provide an electronic means by which Class Members may submit an IRS Form W-9 to the Settlement Administrator.[3] *Id.*

To elect not to participate in the Settlement, a class member must send written notice of their intent to opt out to the Settlement Administrator within 45 days of the mailing of the Notice, via U.S. mail or through the settlement website. *Id.* §§III ¶¶24, 30, VII.D, ¶2. Any objections to the Settlement must also be submitted in writing to the Settlement Administrator within 45 of the Notice via U.S. mail or through the website. *Id.* §§III ¶22, VII.D, ¶1. The Settlement Administrator will provide to all counsel, and Plaintiff's counsel will file with the Court, all objections and opt out requests received. *Id.* §VII.D, ¶4. No one may appear at the final approval hearing to object to the Settlement without having submitted an objection in writing. *Id.* ¶1; *see also id.* §III, ¶24.

F. Release of Claims

In consideration for their awarded share of the Net Class Settlement Amount, as of the date the Settlement becomes effective, all participating class members will release "any and all claims, both potential and actual, that could have been alleged by reason of or in connection with or that are reasonably related to any matter or fact set forth or referred to in the Action." Settlement §XIII.A. This is the language approved in *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 537 (2021) (citing *Villacres v. ABM Industries Inc*., 189 Cal.App.4th 562, 586 (2010)).

V. LEGAL STANDARD

The California Rules of Court ("Rules") set forth two steps for evaluating a class action settlement. First, "the court preliminarily approves the settlement and the class members are notified as directed by the court." *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110,

[3] Defendants do not have class members' Social Security Numbers. Accordingly, in order to comply with IRS rules, the Settlement Administrator must request such information from Class Members by asking that they complete an IRS Form W-9. Cervantez Decl. ¶12. Class Members who do not return a W-9 will still receive their *pro rata* share of the Net Settlement Amount, but the Settlement Administrator will withhold the IRS required amount and transmit it to the IRS on Class Members' behalf. Settlement, §XI.D.

1118 (2009) (citing California Rules of Court Rule 3.769(c)-(f)). Second, "the court conducts a final approval hearing to inquire into the fairness of the proposed settlement." *Id.* (citing Rule 3.769(g)).

At the first, preliminary approval step, courts must determine whether "there is, in effect, 'probable cause' to submit the proposal to members of the class and to hold a full-scale hearing on its fairness." *California v. Levi Strauss & Co.*, 41 Cal.3d 460, 485 (1986) (quoting Manual for Complex Litigation § 1.46). At this stage, "the settlement need only be potentially fair, as the court will make a final determination of its adequacy at the hearing on final approval, after such time as any party has had a chance to object and/or opt out." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). This preliminary inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (quotation omitted)). "Public policy generally favors the compromise of complex class action litigation." *Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1118 (quotation omitted).

Courts have broad powers to determine whether a proposed class action settlement is fair, reasonable, and adequate. *Mallick v. Superior Ct.*, 89 Cal.App.3d 434, 438 (1979). The decision to approve or reject a proposed settlement is committed to the trial court's sound discretion. *Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224, 234-35 (2001), *disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 409 (2018).

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

Courts consider several factors in making the fairness determination, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk*, 48 Cal.App.4th at 1801 (citation omitted). Generally, settlement agreements are presumed fair when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802 (citing Newberg & Conte,

Newberg on Class Actions, § 11.41, pp. 11-91). This list "is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245 (citation omitted). Here, these factors support preliminary approval of the Settlement.

A. The Settlement Is a Product of Arm's-Length Negotiations.

The Settlement is the result of extensive arm's-length negotiations between experienced class counsel, who are deeply familiar with the facts and legal issues of this case, and counsel for Defendants, who vigorously defended the case. The negotiations took place under the guidance of an experienced mediator, Mediator Dhanidina. Rothschild Decl. ¶13. Mediator Dhanidina's active role in the mediation substantiates the non-collusive nature of the Settlement. *See, e.g.*, *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (noting that the "presence of a neutral mediator . . . weigh[s] in favor of a finding of non-collusiveness").

The negotiations also took place over a period of several months. The parties began settlement discussions over email and videoconferences in the summer of 2024. Rothschild Decl. ¶13. The parties decided to seek the assistance of a mediator, and met for a full-day, videoconference mediation with Mediator Dhanidina in October 2024. *Id.* During that day of negotiation, the parties strenuously advanced and held firm in their respective positions and were ultimately not able to reach agreement. *Id.* It was only through several additional months of negotiation that the parties were able to craft a fair resolution in the form of monetary and non-monetary relief. *Id.* ¶14.

B. Sufficient Discovery Occurred to Enable Counsel and the Court to Intelligently Determine the Settlement Is Fair.

The status of discovery at the time the Settlement was reached also weighs in favor of preliminary approval. This requirement exists so that parties can provide the court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 132-33 (2008).

Here, Plaintiff's counsel obtained thousands of documents from Defendants, as well as written discovery responses, regarding the merits of Plaintiff's false advertising claims, class certification, and class damages. Plaintiff's counsel was also able to interview many class members. The parties

also litigated substantive legal issues regarding Plaintiff's theory of class wide liability in the demurrer and motion to strike proceedings. The discovery and litigation that pre-dated the parties' settlement negotiations rendered both parties well equipped with "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation[,]" which further supports the non-collusive nature of the Settlement. *Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 801 (2009).

C. Settlement Is Appropriate in Light of the Strength of Plaintiffs' Case and the Risk of Further Litigation.

In evaluating the strength of a plaintiff's case, a court should not reach any conclusions on contested issues of law or fact, because it is the uncertainty of such issues that leads parties to resolve their disputes short of a final, litigated resolution. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1145 (2000). Here, although Plaintiff's counsel believes the evidence supports Plaintiff's FAL, UCL, and CLRA claims, continued litigation poses several uncertainties.

First, Plaintiff faces risks at class certification. Plaintiff expects Defendants to vigorously oppose class certification. If the claims are not certified as a class, then each class member would have to press their claims on their own behalf.

Plaintiff also faces risk on the merits of her claims. One of the major issues in the case is the calculation of damages, which the parties have vigorously contested. Rothschild Decl. ¶19. Defendants assert that Plaintiff (and the class) suffered no damages, including because class members received *a* cybersecurity bootcamp education as well as a certificate indicating they had graduated from the Caltech CyberSecurity Bootcamp, which would help them with prospective employers. *See id.*; Defs. Reply iso Demurrer (Mar. 20, 2024) at 4-5. On the merits, Defendants have also argued that the Bootcamp websites are not deceptive; that the challenged representations are not material; and that Defendants adequately disclose Simplilearn's role in the Bootcamp to students. *See, e.g.*, Defs. Demurrer to 2nd Am. Compl. (Jan. 31, 2024) at 16-21; Defs. Reply iso Demurrer at 6-10. Defendants are also likely to dispute that Plaintiff can show class wide exposure and reliance on the alleged representations. *See, e.g.*, Defs. Reply iso Mot. to Strike (Mar. 20, 2024) at 7-9.

Plaintiff disagrees with all of that. But there is a risk that the Court or, if the case proceeded to trial, the factfinder, would adopt some or all of Defendants' positions, which would either limit or potentially eliminate Plaintiff's claims. Courts routinely hold that "tangible, immediate benefits" of settlement outweigh such risks. *Ebarle v. Lifelock, Inc*., 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016). Further, even if the factfinder found for Plaintiff at trial, class members may not receive any recovery until after years of costly appeals. *See, e.*g., *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results") (quotation omitted); *In re LinkedIn User Priv. Litig*., 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation.").

D. The Settlement Provides Substantial Monetary Relief to Class Members.

The monetary value of a settlement is another factor to consider in determining whether a settlement falls within the range of possible final approval. *Wershba*, 91 Cal.App.4th at 244-45. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Id*. at 250. Settlements providing for narrower relief than could be obtained at trial can be fair and reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.* (quoting *Air Line Stewards, etc., Loc. 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972); s*ee also Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.")

Given the uncertainties and risks detailed above, and the significant time and risk involved in an appeal of any verdict in favor of Plaintiff, the settlement is an excellent result for the class. The $400,000 Class Settlement Amount represents outstanding value given the current procedural

posture and the vastly competing views of the parties as what Plaintiff could achieve if she was successful at class certification and proceeded to trial. In general, the appropriate measure of restitution or damages in deceptive advertising cases is the "difference between what was paid [by class members] and what a reasonable consumer would have paid at the time of purchase without the fraudulent or omitted information." *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015). Consumers are almost never entitled to a full refund (which would occur only if the product they purchased had *zero* value), but rather recover a percentage of the purchase price. *See In re Tobacco Cases II*, 240 Cal.App.4th 779, 802 (2015).

Here, the $400,000 Class Settlement Amount is approximately 16.5% of the total tuition paid by the class. *See* Kumar Decl. ¶3. Since the amount is distributed on a pro rata basis based on tuition paid, each class member will recover approximately a 16% refund on their tuition.[4] After deducting settlement administrative fees and a service award to Plaintiff, this averages approximately $1465 per class member. In Plaintiff's counsel's opinion, a 16% refund is on the high side of what the class could reasonably recover even if Plaintiff were successful on class certification, trial, and appeal, considering Defendants' arguments against damages as well as the tuition charged by other similar cybersecurity bootcamps that disclose the involvement of a third-party provider like Simplilearn. Rothschild Decl. ¶20; Cervantez Decl. ¶9. This substantial recovery for class members supports preliminary approval of the Settlement.[5]

E. The Settlement Includes Important Programmatic Non-Monetary Terms.

Courts assessing the adequacy of a multi-part settlement are instructed to view "the complete package taken as a whole, rather than the individual component parts." *Officers for Just.*, 688 F.2d at 628. Here, Plaintiff has alleged claims for which the remedies are primarily monetary. Nonetheless,

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[4] Allocation on a pro rata basis based on tuition paid is fair because tuition for the Bootcamp has varied over the class period, plus some students received discounts. Rothschild Decl. ¶21.

[5] Courts routinely approve settlements that amount to far smaller portions of a *full* recovery. *E.g.*, *Reed v. 1-800 Contacts, Inc.*, 2014 WL 29011, at *6 (S.D. Cal. Jan. 2, 2014) (approving settlement for 1.7 percent of possible recovery); *In re Toys R Us-Delaware, Inc.-Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453-54 (C.D. Cal. 2014) (3 to 5%); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (6%); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2,2015) (14%); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (17%). Here, 16% is much closer to a full recovery

Plaintiff has also obtained significant programmatic relief. Pursuant to the Settlement, Defendants agree to various disclosures and safeguards that will ensure the Bootcamp is accurately represented in Defendants' marketing materials, including, among other things, a baseline level of Caltech involvement or oversight regarding the substantive aspects of the Bootcamp (teaching and curriculum) and accurate descriptions of Caltech's and Simplilearn's respective roles in the Bootcamp on Defendants' websites. *See* Section IV.C, *ante.*

F. The Experience and Views of Counsel Support Settlement.

Plaintiffs are represented by respected Class Counsel with decades of experience and long and successful records of prosecuting class action and education cases to favorable resolutions. Cervantez Decl. ¶¶2-8; Rothschild Decl. ¶¶3-10. Their view that this settlement is fair weighs in favor of preliminary approval. *See 7-Eleven*, 85 Cal.App.4th at 1146.

G. The Proposed Amount for Attorneys' Fees and Costs is Fair and Reasonable.

The CLRA is a mandatory fee-shifting statute. *See* Civil Code § 1780(e) (court "shall award court costs and attorney's fees to a prevailing plaintiff"). Plaintiff maintains that fees are also available under Code of Civil Procedure §1021.5, which awards attorneys' fees for lawsuits that enforce an important right affecting the public interest. The legislative purpose of these fee-shifting provisions is to enable consumers to obtain qualified legal representation to pursue remedies for deceptive business practices when they otherwise would not be able to afford representation. *See Hayward v. Ventura Volvo*, 108 Cal.App.4th 509, 512 (2003); *Graciano v. Robinson Ford Sales, Inc*., 144 Cal.App.4th 140, 164 (2006); *In re Nicole S.*, 39 Cal.App.5th 91, 104 (2019). Attorneys' fees under these provisions are determined on a lodestar basis to fully compensate prevailing attorneys, without regard to proportionality to the plaintiff's recovery. *See Graciano*, 144 Cal.App.4th at 164; *Warren v. Kia Motors Am., Inc*., 30 Cal.App.5th 24, 37 (2018). And here Plaintiff's counsel also negotiated substantial programmatic relief that will benefit the public on a going forward basis.

Plaintiff's counsel negotiated an excellent recovery for the small class—almost as much as Plaintiff's counsel expects the class could receive at trial—in addition to the programmatic relief. Rothschild Decl. ¶20; Cervantez Decl. ¶9. The parties then negotiated a separate amount to be allocated towards attorneys' fees under the fee-shifting statutes. Rothschild Decl. ¶24. This amount

of $325,000 only reimburses Plaintiff's counsel for a small fraction of the time and expenses they reasonably incurred to date in litigating this hard-fought case. *Id.*; Cervantez Decl. ¶14. For purposes of preliminary approval, this amount is eminently reasonable. Plaintiff's counsel will separately move the Court, supported with further declarations and documentation, to award the Attorneys' Fees Amount prior to the final approval hearing. Any attorneys' fees disallowed by the Court will not revert to Defendants, but will be paid *pro rata* to the class. Settlement §XII ¶2.

H. The Proposed Service Fee Award is Fair and Reasonable.

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *See, e.g.*, *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case). The proposed $4,500 service award here is warranted. In addition to providing Defendants a broad release and covenant not to sue, *see* Settlement §XIII.B, Plaintiff has provided significant value to her fellow class members that should be compensated. Plaintiff has been diligent and dedicated in litigating this case for almost two years, and she expended substantial time responding to discovery and assisting counsel in prosecuting the case. Lopez Decl. ¶¶6-8. Plaintiff will fully brief the reasonableness of the service award in connection with final approval.

I. The Settlement Administrator is Qualified and Its Fee is Fair and Reasonable.

After soliciting bids from four settlement administrators, the parties agreed to retain Simpluris, Inc., a highly experienced administrator, to serve as Settlement Administrator. Cervantez Decl. ¶11; *see generally* Islas Decl. The costs of administration are estimated to be $9,000, and Simpluris, Inc. has provided a not-to-exceed bid of $10,500. Cervantez Decl. ¶11; *see* Islas Decl. ¶9 & Ex. C (administrator bid). That bid is for all administration work for the first distribution of the settlement fund. That was the lowest bid received. Cervantez Decl. ¶11. If there is a second distribution to class members, Simpluris would charge $2,535.09 for that; that amount would be subtracted from the second distribution funds prior to the second distribution. *Id.* Plaintiff's counsel have used Simpluris to administer previous settlements, and found their service to be satisfactory. *Id*. Plaintiff's counsel have no financial or other interest in Simpluris; their only relationship is that Plaintiff's counsel have previously retained Simpluris to administer other settlements. *Id.*

J. The Notice Process Apprises Class Members of Their Rights and Satisfies Due Process.

The class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Levi Strauss & Co.*, 41 Cal.3d at 485; *see also* C.R.C. 3.769. A "summary notice directing class members to a Web site containing more detailed notice … [is] a 'perfectly acceptable' manner of giving notice." *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1392 (2010) (quotation omitted).

Here, the proposed Notice, which will be sent by mail and email, advises the class members of the proposed settlement and their options to remain in the class, opt-out, or object, and provides information on the meaning and nature of the claims; who is a class member; the terms and provisions of the Settlement; the monetary and non-monetary relief the Settlement will provide to class members; how the monetary relief will be allocated; the class member's estimated individual share of the Settlement; the fact that counsel will seek a service award for the named plaintiff; the amount counsel will seek for attorneys' fees; the date, time and place of the final approval hearing; and the procedures and deadlines for opting out or objecting to the Settlement. *See* Settlement Ex. A. The Settlement Administrator will maintain a website with the full Settlement Agreement, Notice, and Second Amended Complaint, and will maintain a dedicated hotline that class members can call to have their questions answered. *See* Islas Decl. Ex. C. This plan meets constitutional due process standards as well as the standards under Rule 3.766, and should be approved.

VII. SETTLEMENT CLASS CERTIFICATION IS APPROPRIATE

A. The Settlement Class is Ascertainable.

"The party advocating class treatment must demonstrate the existence of an ascertainable [] class[.]" *Brinker Rest. Corp. v. Superior Ct*., 53 Cal.4th 1004, 1021 (2012). "[A] class [i]s ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." *Noel v. Thrifty Payless, Inc*., 7 Cal.5th 955, 980 (2019) (quotation omitted). Here, the proposed settlement class of 263 California Bootcamp students who did not already receive full refunds is identifiable, and has already been identified, from Defendants' enrollment records, which include names and contact and tuition information. Kumar Decl. ¶3.

B. The Settlement Class is Sufficiently Numerous.

Numerosity is satisfied where "the class is too large to make joinder practicable …. [I]mpracticality does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Hendershot v. Ready to Roll Transp., Inc*., 228 Cal.App.4th 1213, 1222 (2014) (quotation omitted). Here, the settlement class includes 263 class members. It would not be practical to join that many individuals before the Court.

C. There is Significant Community of Interest Among the Settlement Class.

"The community of interest requirement involves three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Noel*, 7 Cal.5th at 968; *see also* Civil Code §1781 (same requirements for CLRA classes). All factors are present here.

1. Common questions of law and fact predominate.

"As a general rule … if the defendant's liability can be determined by facts common to all members of the class, a class will be certified[.]" *Noel*, 7 Cal.5th at 968 (cleaned up). UCL, FAL, and CLRA deceptive advertising claims are therefore "ideal for class certification[.]" *Lytle v. Nutramax Lab'ys, Inc*., 114 F.4th 1011, 1034 (9th Cir. 2024); *see also Bradach v. Pharmavite, LLC*, 735 F. App'x 251, 254-55 (9th Cir. 2018) (same); *Cabrera v. Google LLC*, 2023 WL 5279463, at *30 (N.D. Cal. Aug. 15, 2023) (same); *Reitman v. Champion Petfoods USA*, Inc., 2019 WL 7169792, at *8-9 (C.D. Cal. Oct. 30, 2019) (same), *aff'd,* 830 F.App'x 880 (9th Cir. 2020).

To prevail on a UCL, FAL, or CLRA claim, a plaintiff must show that a reasonable consumer is likely to be deceived by the defendant's advertising and that the challenged representation or omission is material to a reasonable consumer. *See Kasky v. Nike, Inc*., 27 Cal.4th 939, 950-951 (2002) (FAL and UCL); *Shaeffer v. Califia Farms, LLC*, 44 Cal.App.5th 1125, 1135-1136 (2020) (CLRA); *In re Tobacco II Cases*, 46 Cal.4th 298, 326-27 (2009) (classwide reliance is presumed if the representation or omission is material); *In re Vioxx Class Cases*, 180 Cal.App.4th 116, 129 (2009) (same). Both of those elements are judged based on "objective" standards that do not require individual inquiries into what each consumer thought, and therefore can be decided based on evidence common to the class. *See Lytle*, 114 F.4th at 1034; *Reitman*, 2019 WL 7169792, at *8-9;

Miller v. Fuhu Inc., 2015 WL 7776794, at *16; *Shaeffer*, 44 Cal.App.5th at 1135-36; *Skinner v. Ken's Foods, Inc*., 53 Cal.App.5th 938, 949 (2020).

Similarly, the common questions of which representations or omissions were made on Defendants' websites can be proven by class-wide evidence of the websites themselves. *See Tobacco II*, 46 Cal.4th at 328; *In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prod. Liab. Litig*., 609 F.Supp.3d 942, 988 (N.D. Cal. 2022). And the common question of whether the advertising was in fact false—that is, whether instructors and curriculum were provided by Caltech (as implied by the advertising) or by Simplilearn—can be decided based on class-wide evidence, since the students all took the same Bootcamp course. Because the elements of the class claims can be adjudicated based on common evidence, common questions will predominate. *See Brinker*, 53 Cal.4th at 1021-22.

2. Plaintiff's claims are typical of the class.

"The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Gonzales v. San Gabriel Transit, Inc*., 40 Cal.App.5th 1131, 1162 (2019) (cleaned up). Here, Plaintiff Lopez relied on the same website advertising as other class members to enroll in the Bootcamp, received the same curriculum and instruction, and suffered the same injury—paying a higher tuition for the Bootcamp than if it had been accurately advertised. Lopez Decl. ¶¶3-4. She is typical of the class she seeks to represent.

3. Plaintiff will adequately represent the class.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am*., 60 Cal.App.3d 442, 450 (1976) (citation omitted). In this case, Class Counsel is well qualified. *See* Cervantez Decl. ¶¶2-8; Rothschild Decl. ¶¶3-10. Moreover, Plaintiff understands her role as class representative, her fiduciary obligations to the putative class members, and has diligently prosecuted this action to a successful outcome. Lopez Decl. ¶¶5-6. Furthermore, Plaintiff has no interests that are antagonistic to the class she seeks to represent. *Id.* ¶5.

VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING.

The final step in the settlement approval process is a final fairness hearing at which the Court

may hear additional evidence and argument necessary to make its settlement evaluation. At that hearing, the parties and the Court will further address the fairness, adequacy, and reasonableness of the Settlement Agreement, any service award to Plaintiff, the attorneys' fees to be awarded to Plaintiff's counsel, and whether judgment resolving the case should be entered. Given the notice schedule set forth in the Settlement, Plaintiff requests that, should the Court grant this motion for preliminary approval, a date for a final approval hearing should also be set at least 180 days after preliminary approval.

Dated: July 2, 2025

By: */s/ Corinne F. Johnson*
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